



was 7434 South Indiana Avenue and not 7424 South Indiana Avenue. Appellant requested an address change.

By letter dated July 21, 2011, OWCP acknowledged receipt of appellant's address change request.

On January 10, 2012 appellant filed an appeal before the Board contending that OWCP was sending her paperwork to the incorrect address. Appellant reiterated that her correct address was 7434 South Indiana Avenue and not 7424 South Indiana Avenue.

The Board finds that this case should be remanded to OWCP as the August 20, 2010 decision was not properly issued. By motion dated December 18, 2012, the Director of OWCP found that a decision was not deemed to have been issued under the Federal Employees' Compensation Act<sup>2</sup> (FECA) unless appellant was sent a copy of the decision. The Director also acknowledged that if an OWCP decision was sent to an improper address and was not received by appellant, it was not properly issued.<sup>3</sup>

OWCP mailed the August 20, 2010 decision to appellant's previous address at 7424 South Indiana Avenue. Appellant's August 5, 2010 appeal request form noted her correct address as 7434 South Indiana Avenue. By letter dated June 19, 2011, appellant informed OWCP that she had not received the decision as it had been mailed to an incorrect address. She again notified OWCP that her correct address of record was at 7434 South Indiana Avenue. By letter dated July 21, 2011, OWCP acknowledged appellant's address change, but did not reissue the August 20, 2010 decision. As the August 20, 2010 decision was sent to an improper address and appellant stated that she never received it, it was not properly issued. Moreover, OWCP failed to provide appellant with a copy of the August 20, 2010 decision even after she notified them of nonreceipt as a result of an improper address.

Under the mailbox rule, it is presumed, in the absence of evidence to the contrary, that a notice mailed to an individual in the ordinary course of business was received by that individual. This presumption arises when it appears from the record that the notice was properly addressed and duly mailed.<sup>4</sup> However, as a rebuttable presumption, receipt will not be assumed when there is evidence of nondelivery.<sup>5</sup> Also, it is axiomatic that the presumption of receipt does not apply where a notice is sent to an incorrect address.<sup>6</sup> Thus, appellant could not have timely requested an appeal from an OWCP decision that she did not receive.<sup>7</sup>

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<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> See *S.S., Order Remanding Case*, Docket No. 12-121 (issued February 14, 2013); see also *Carolyn Mobley*, Docket No. 03-1411 (issued February 11, 2004); *Kathy B. Glauser*, Docket No. 97-2857 (issued June 4, 1999); *Tammy J. Kenow*, 44 ECAB 619 (1993).

<sup>4</sup> See *Michelle Lagana*, 52 ECAB 187 (2000).

<sup>5</sup> See *C.O.*, Docket No. 10-1796 (issued March 23, 2011); *M.U.*, Docket No. 09-526 (issued September 14, 2009).

<sup>6</sup> See *Clara T. Norga*, 46 ECAB 473 (1995); *W.A.*, Docket No. 06-1452 (issued November 27, 2006).

<sup>7</sup> *E.C.*, Docket No. 11-1774 (issued February 27, 2012).

Thus, the case will be remanded to OWCP as the August 20, 2010 decision was not properly issued. Following such further development as OWCP deems necessary, it shall issue an appropriate decision regarding appellant's claim.

**IT IS HEREBY ORDERED THAT** the August 20 2010 decision of the Office of Workers' Compensation Programs is set aside; the case record is remanded to OWCP for further proceedings consistent with this order of the Board.

Issued: March 12, 2013  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board